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June 14, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

Dear Mr. Caton

Submitted on behalf of National Wireless Resellers Association are an original and five copies of our Comments to the Second Notice of Proposed Rule Making in CC Docket No. 94-54. Any questions relating to these Comments should be addressed to undersigned counsel.

Very truly yours

Joel H. Levy

Enclosures

BEFORE THE

Federal Communications Commission

In the Matter of	)	
	)	
Interconnection and Resale Obligations	)	CC Docket No. 94-54
Pertaining to Commercial Mobile Radio Services	)	

COMMENTS OF THE NATIONAL WIRELESS RESELLERS ASSOCIATION

June 14, 1995

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SUMMARY

The National Wireless Resellers Association responds in these comments to a variety of issues raised by the Commission.

While it would be desirable for the Commission to adopt rules of general applicability requiring the interconnection of a CMRS reseller's switch to a CMRS provider's facilities, at the very least the Commission should issue guidelines clearly obligating all CMRS providers to interconnect with resellers upon reasonable request. Such action is mandated by law and cannot be avoided by the Commission.

Switched resale serves the public interest, at least, to the same extent as resale in general and no policy or legal distinctions can be drawn which permits disparate treatment of switch-based resellers from non-switch-based resellers.

In deciding the issue of switch-based resale, the Commission may not be guided by considerations of the cost to the Commission of imposing regulations. Furthermore, the cost of connecting a CMRS provider's system to a CMRS reseller's switch will be borne by the reseller. The public will bear no costs if the Commission adopts general rules requiring switch-based resale. Switched resale will check anti-competitive behavior in the CMRS market, and, in particular, the cellular industry and advance the Commission's interconnection policies.

Number transferability for CMRS resellers will promote competition in the CMRS marketplace and should be adopted to enhance consumer choice as well as to enhance the ability of resellers to obtain more competitive resale agreements.

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COMMENTS OF THE NATIONAL WIRELESS RESELLERS ASSOCIATION

The National Wireless Resellers Association ("NWRA"),[1/] by its counsel respectfully submits its Comments in response to the Second Notice of Proposed Rule Making ("Second Notice") in the above-captioned Docket, released April 20, 1995. The Commission's notice invites comments on a number of areas of concern involving interconnection policies for the commercial mobile radio services.[2/]

1/ The NWRA was formerly known as the National Cellular Resellers Association ("NCRA"). Pleadings previously filed with the Commission in this Docket, will for convenience, be referred to as those of "NWRA."

2/ These areas are (1) interconnection obligations between and among commercial mobile radio service providers; (2) whether resale of commercial mobile radio services should be allowed; (3) whether any restriction should be placed upon resale of CMR service by another facility-based CMRS provider in the same market; (4) what restrictions or requirements should be placed upon the obligation of CMRS providers to allow their systems to be used on a roaming basis by other CMRS provider subscribers and whether there should be a requirement of technical compatibility of equipment; and, finally (5) whether resellers of CMRS service should be allowed to install their own switch to the CMRS facility provider's system. The Commission has also requested comment on the issue of number transferability for subscribers of one CMRS service to the facilities of another CMRS provider.

NWRA's comments here will be directed primarily to the question of whether switched resale should "be generally imposed upon CMRS providers at this time." (Paragraph 95, p. 47 of Second Notice.)

In support whereof the following is shown:

I. The Commission Does Not Have the Legal Authority to Forebear From Requiring Specific Switch-Based Resale on an *Ad Hoc* Basis Even if it Desists From Adopting General Rules Requiring CMRS Providers to Allow the Installation of a Reseller Switch to their System

1. Under Section 332(c)(1)(B) and Section 201 of the Communications Act, CMRS providers must permit resellers, upon reasonable request, to interconnect their own switches to the CMRS provider's network facilities. Section 332(c)(1)(B) requires the Commission to order a CMRS provider to provide interconnection upon request to another common carrier "pursuant to the provisions of section 201 of this Act." Section 201 requires common carriers to provide interconnection to other common carriers "upon reasonable request" and where the Commission finds, after opportunity for hearing, that the requested interconnection "is in the public interest." The "public interest" standard is also one that is well-established in law: so long as the requested interconnection is privately beneficial without being publicly detrimental, it is in the public interest.[3/]

2. NWRA has shown in previous submissions to the Commission that the type of interconnection generally being sought by cellular resellers is technically feasible.[4/] Indeed, advancements in switch design ensure that the vast majority of telecommunications networks will

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3/ Hush-a-Phone Corp. v. United States, 238 F.2d 266 (D.C. Cir. 1956).

4/ The Commission has determined that a "reasonable request" for interconnection is one that is technically and economically feasible. AT&T Premises Ruling, 60 F.C.C. 2d 939 (1976).

have little problem interconnecting with one another today and in the future. Regarding the question of economic feasibility, it is an issue the Commission need not be concerned with since resellers have already indicated they will bear all direct costs associated with the interconnection request. By their very nature, therefore, such requests will not generate additional costs to the carrier from whom interconnection is being requested nor additional costs for subscribers. In short, the issue of whether a specific interconnection request is economically feasible should be of concern only to the reseller who is putting together such a request and corresponding business plan. And the marketplace, not the Commission, ultimately should decide if the reseller made the correct business decision.

3. The standard for determining whether an interconnection request is in the public interest, that is, whether it is "privately beneficial without being publicly detrimental," is closely related to the "reasonable request" conditions. In fact, by showing that a request is technically and economically feasible, the determination is made also that the request will cause no harm to the existing network and to current and future subscribers. Since the courts have determined that there is no burden on the party seeking interconnection to show that it would be privately beneficial, the determination that an interconnection request is reasonable is tantamount to showing that it is in the public interest.

4. In the context of existing legal precedent, then, the general concept of a reseller switch in the commercial mobile voice arena is both reasonable and in the public interest. Most resellers seeking to interconnect switches to CMRS carrier networks, upon reasonable request, eventually will secure the requested interconnection provided they have the resources to battle recalcitrant carriers through protracted legal maneuvers which could take years to resolve. The Commission, on the other hand, could shorten the process considerably and at the same time protect the fundamental

interconnection rights of cellular resellers, simply by acknowledging that: (1) CMRS providers, like every other common carrier covered by the Communications Act, have a basic duty to interconnect upon reasonable request; (2) in general, the concept of a reseller switch in the commercial mobile voice area is both reasonable and in the public interest; and (3) CMRS providers are obligated to negotiate in good faith a reseller interconnection request to determine if the specific request is in fact both reasonable and in the public interest.[5/]

5. It would be desirable for the Commission to adopt specific rules governing interconnection between reseller switches and the facilities of facilities-based CMRS providers. However, if the Commission chooses to defer from adopting such specific rules, it should do so only in the event it issues clear guidelines, that have the legal force of a rule, which instruct every CMRS provider to accept and negotiate in good faith requests to install a reseller switch in a particular market. The guidelines must also make clear that a CMRS provider may reject such proposals only upon a showing that specific interconnection requests would cause actual technical harm to the provider's network. If the Commission refuses to adopt either general rules of interconnection applicability or clear policy guidelines, and thus encourages CMRS providers to deny interconnection of a reseller switch under any conditions, notwithstanding their legal obligation to negotiate such interconnection requests in good faith, it will have improperly abandoned its statutory responsibility under Section 332 and 201 of the Act.

6. NWRA's position in this regard has been put forward in a number of prior filings. The Commission, itself, has in paras. 38-44 of the instant Second Notice generally arrived at the same

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[5/] A form or a simple rule which would make plain the interconnection obligation of CMRS providers to resellers is suggested in Exhibit A, attached hereto.

conclusion. We reiterate it here, initially, only to emphasize the point made by the United States Court of Appeals for the District of Columbia Circuit that the Commission may not utilize the pendency of general rule makings to defer action on specific complaints, filed under Section 208, alleging violations of law. AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992), cert. denied, 113 S.Ct. 3020 (1993).

II. The Public Interest in Consumer Choice and Competitive Markets is Served No Less By Switched Resale as By Resale in General; Any Restriction on Interconnected Resale Would Violate Sections 201 and 202 of the Communications Act

7. The Commission's tentative conclusions regarding the desirability of imposing resale on CMRS providers are a study in contradiction and fly in the face of its long-standing resale and shared use policies. On the one hand, the Commission laboriously details the many benefits consumers would derive from the imposition of its basic resale policies on the CMRS marketplace.[6/] The

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[6/] In the Second Notice, the Commission emphasized the following points regarding resale:

> "The Commission has found on many occasions that the denial of resale is unjust and unreasonable and unlawfully discriminatory in violation of Section 201(b) and Section 202(a) of the Act." [Footnote omitted.] Par. 83.
>
> "Requiring CMRS licensees to provide resale capacity will have the overall effect of promoting competition. Prohibiting resale restrictions provides a means of policing price discrimination, mitigating head-start advantages among licensees, and providing some degree of secondary market competition (i.e., retail price competition). Further, promoting resale is advantageous because resellers may be a source of marketplace innovation (e.g., by adding value to the resold service). For example, a reseller may provide a customized billing service, or bundle resold service with other telecommunications services such as interexchange or cable service. Resale could increase overall demand for CMRS services and increase overall traffic on telecommunications networks, thus permitting achievement of economies of scope and scale." Par. 84.
>
> "Requiring resale would involve minimal expense and no technical problems

Commission then does a sudden turnaround regarding the benefits of imposing switch-based resale on CMRS providers. The Commission apparently abandons its enthusiasm for resale to seriously question whether it would be wise to mandate switched resale in a market which may soon be competitive and whether the "costs" of mandating switched resale may somehow outweigh the benefits to consumers.

8. The fact is, the benefits of resale generally are not diminished or lost when CMRS is resold under an interconnection agreement between a CMRS provider and reseller. On the contrary, the benefits of resale are enhanced through switched resale and only switched resale is capable of realistically delivering some of the important benefits the Commission has identified above.

9. For example, a reseller cannot deliver "marketplace innovation" if it lacks the technical means (interconnection) of adding value to the CMRS provider's offering. Similarly, its ability to bundle in a practical way non-CMRS offerings with a CMRS service may be completely dependent on access to facilities which it can then interconnect to other telecommunications services. Take the issue of customer choice of long-distance carriers. Without equal access, CMRS consumers will be

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for most of the CMRS licensees subject to the requirement. CMRS providers are permitted to charge resellers, thereby insuring that they are compensated for the provision of resale capacity." Par. 85.

"CMRS providers may have incentives to refuse to enter into resale arrangements with competing carriers. For example, even though carriers are permitted to charge and realize a profit from selling services to resellers, the return is higher when they provide the retail service directly to end users. Thus, absent a Commission-imposed resale obligation, it is our tentative view that carriers might very well refuse to permit other providers to resell their service. Therefore, we tentatively conclude that a mandatory general resale requirement is necessary because it will serve as an effective means of promoting competition in the CMRS marketplace." Par. 86.

relegated to the use of those IXCs which the CMRS provider offers. It is no answer to the problem of enhancing competition among IXCs and CMRS providers to leave consumers only with the option of changing CMRS providers in order to gain access to their favored IXC. A pure reseller (i.e. without a facility-based telecommunications service) with its own switch could, however, offer its CMRS customers a choice of preferred IXC carriers without going through the LEC and paying an unnecessary access and switching fee. A switch-based reseller could also offer, at the same time, "1+" dialing to the customer's IXC rather than I0XXX access, an option suggested by opponents of equal access for non-BOC cellular carriers. See Comments of Airtouch Communications, filed here on September 12, 1994, pp. 7-8. Thus, a switch-based reseller could enhance customer choice and efficiently satisfy customer demand for an array of interconnected services that no CMRS provider may choose to offer in a market.

10. Moreover, without the means to connect directly to the CMRS provider's system, a non-facilities-based CMRS provider that wished to engage in resale of CMRS service and bundle it with its cable or interexchange service, will need switched access to make the bundling of such services a competitive package of communications services. Without an FCC requirement for switched resale, in this example, there is simply no incentive for the local CMRS provider, which may be owned by the local BOC and is soon likely to be allowed to provide long-distance services, to agree to interconnection that would by-pass its bottleneck control through the local loop to the IXC. Further, the advantages of a reseller switch, such as access for the reseller of real time usage information enables the reseller to do customized billing and better control fraudulent practices.

11. Given the public interest benefits in interconnected switch-based resale and the absence of any detriment, it would be patently illegal for the Commission to allow CMRS providers to

restrict resale to non-switch based entities. In Resale and Shared Use, 60 F.C.C. 2d 261, 272 (1976) the Commission identified two types of resale: "brokerage and processing" (i.e., a pure reseller and a switch-based reseller) and imposed the same resale requirements on carriers regardless of the character of the reseller. No distinction can now be drawn to permit restrictions on switch-based or "processed" resale and comply with the requirements of Sections 201 and 202.

III. The Question of the Cost of Switched Resale

The Commission has correctly stated that resale [generally] "would involve minimal expense and no technical problems for most of the CMRS licensees subject to the requirement," Second Notice, para. 85, and that "CMRS providers are permitted to charge resellers, thereby insuring that they are compensated for the provision of resale capacity." Id. Yet, when the Commission addresses the proposal for switched resale, it suddenly is concerned that "a mandatory switch-based resale policy may impose costs on the Commission, the industry, and consumers." ¶96. The concerns with costs for each of these groups are without merit.

A. Commission Costs

12. Section 1 of the Communications Act imposes on the Commission the requirement "to make available, so far as possible, to all the people of the United States, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges" and creates the Federal Communications Commission "which shall execute and enforce the provisions of this Act." (Emphasis supplied.)

13. Section 301 of the Act provides that:

> "It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of radio

> transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time under licenses granted by Federal authority, and no such license shall be construed to create any right beyond the terms, conditions and periods of the license."

14. And, with respect to common carriers, who provide service to the public by wire or radio, Section 201(a) and (b) provide that common carriers are obliged to interconnect with other common carriers and to render "charges, practices, classifications or regulations for and in connection with such communications service" [which] shall be just and reasonable. Section 202(a) states that "it shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage."

15. Nowhere in the Act is the Commission empowered not to discharge these responsibilities because of the "cost" of appropriate regulation. While the Commission may be able to take account of the disparate cost of various alternative means of carrying out its responsibilities, it may not abdicate its statutory responsibilities because of that factor.

16. The process of adopting interconnection rules (which NWRA has urged) has an initial cost for adoption (a cost the FCC is now incurring in this Docket) but thereafter diminishes the likelihood and cost of further administrative oversight when all parties know precisely what are their responsibilities. General policy guidelines invite recalcitrant parties to utilize the Commission's processes to delay and test regulatory resolve. If the parameters are set, however, private industry

will not need the Commission to expend public funds excessively. The history of the LEC-cellular interconnection negotiations is a good example of how private industry can, when given sufficient policy guidance from the FCC, arrive at reasonable commercial and technical arrangements that do not require excessive, or costly, governmental oversight. Moreover, under the provisions of Section 503(b)(2)(B) the Commission is authorized to assess forfeitures against common carriers as high as one million dollars. This forfeiture authority would enable the Commission to recover the cost of expensive oversight of unreasonable refusals by carriers to abide by Commission interconnection rules or orders. Indeed, the willingness of the Commission to assess such forfeitures will do much to encourage voluntary compliance with Commission rules regarding reseller switch interconnection.

B. Industry Costs

17. As the Commission has noted in para. 96, certain of the carriers have claimed, without specificity or supporting detail, that switch-based resale may entail carrier expenditures to accommodate a reseller's proposal to install its own switch. NWRA has addressed these issues, as the Commission has noted, in NWRA's September 12, 1994 Comments at p. 16-18. NWRA looks forward to receiving from the carriers in their instant comments precisely what costs they believe will be incurred and why such costs cannot be recovered as part of any interconnection agreement with resellers.

18. Thus, the Commission's analysis of the record it has invited to be compiled on this point must be premised on the overall public interest in innovation, non-discriminatory and reasonable rates for consumers, and the like advantages it has identified, as justifying a resale requirement for the CMRS services. Protecting profit margins of carriers or, conversely, requiring carriers to

subsidize reseller activities without regard to public benefits is irrelevant to the FCC's current obligations.[7/]

19. In the "Comments of Airtouch Communications" filed September 12, 1994 in this Docket, pages 23-27, a parade of horribles, lacking specificity and setting forth a series of hypothetical general problems that theoretically might arise from the reseller switch proposal is offered as a reason to not even permit resellers and carriers to negotiate the technical and economic specifics of interconnection. What the Airtouch Comments illustrate is a lack of understanding as to why any reseller would want to install a switch that would damage the very carrier on which it must rely to provide service to its customers. Airtouch's Comments also illustrate a carrier's refusal to acknowledge that the direct costs of interconnection, including necessary adjustments to the carrier's facilities to accommodate the reseller interconnection switch proposal, would be borne by the entity making the interconnection request.

20. Thus, Airtouch argues that "resellers may seek to interconnect their switches to more than one cellular provider and shift customers unpredictably from system to system to take advantage of differences in rate charges at different times of the day. Utilization and planning would become impossible, and blockage and overburdened networks would increase. Failures in traffic engineering or software design could also result in a significant and sustained disruption of the entire cellular network." Airtouch Comments, p. 24. Not only does this argument ignore the common interests of the reseller and the carrier to make the whole system work and the fact that the reseller

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7/ In Resale and Shared Use, 60 F.C.C. 2d 261, 283 (1976) the Commission noted that "we do not view tariff restrictions on resale as justified merely because they protect carrier revenues or rate structures."

will bear the cost of necessary modifications to accommodate the switch, it clearly lacks any understanding as to the manner in which cellular systems operate, how calls are transmitted from mobile phone units and the practical restrictions on any such scheme. A reseller is not capable of shifting customers back and forth between carriers, willy nilly, without making modifications in the cellular subscriber's mobile phone unit so that calls can be transmitted over the air on the different frequencies with which the two systems operate. As the Commission knows, however, when cellular mobile phones are installed, the customer makes a choice of which carrier it will utilize and the phone is appropriately programmed. To shift to another carrier would require the customer to have the radio frequency characteristics of the phone altered. That such changes may be made to accommodate significant differences in service and rates offered by carriers does not mean that a customer or reseller would be able to encourage a customer to engage in daily shifting of service from one carrier to another (and back) to enjoy what are likely to be only fractional pennies difference in rates. The Airtouch Comments, in this regard, are a bogeyman designed to frighten the Commission into believing that the reseller switch will somehow destroy the entire infrastructure of the cellular industry. Not only will this not happen, it is clearly not in the interest of resellers to tamper with the cellular carriers' infrastructure to their mutual detriment.

C. Consumer Costs

21. The Commission has noted the increased number of CMRS providers that will soon be established to provide alternative mobile voice options. Indeed, it has noted these developments to contend that switch-based resale may not be needed to enhance competition in this CMRS segment. If, however, resellers discern a market and opportunity for consumer services, not otherwise provided by facility-based carriers (or provided at excessive price levels), they should not be

prohibited from testing their entrepreneurial judgment against the competition. Switch installation and related costs by resellers in major markets may well run as high as several million dollars. A consumer will not subscribe to a reseller's service that is viewed as unduly costly or not providing other unavailable services or value. What this means is there is no cost or risk to consumers from allowing switch-based resale as another marketplace option. Rather, the risk and cost is wholly on the reseller.

IV. The Need for a Reseller Switch is Enhanced By The Commission's Decisions Denying The Petitions to Continue State Regulation of Cellular Radio Service

22. The reseller switch proposal is, at its heart, a structural response, deregulatory in nature, to enhance competition with minimal governmental regulation.

23. The Commission's decisions, in acting on the eight State petitions to continue regulating commercial cellular phone service, emphasized that, in the Commission's judgment, the overriding purpose of Section 332 of the Act was to express "an unambiguous Congressional intent to foreclose state regulation in the first instance." Rather, the Commission read the statute as "reflect[ing] a general preference in favor of reliance on market forces rather than regulation." PR Docket 94-109 ¶ 8. The Commission has also emphasized in the same order (para. 9) that Congress, in the Commission's view, articulated definitional criteria for determining common carrier status so that "success in the marketplace will not be determined by regulatory strategies but by technological innovation, service quality, competition-based pricing decisions, and responsiveness to consumer needs." Accordingly, in the Commission's view, the question was not whether rates were reasonable or whether adequate competitive conditions exist, but whether rates fell within a "zone of reasonableness" that was bounded at one end by the "investor interest in maintaining financial

integrity and access to capital markets," and at the other, by the "consumer interest in being charged non-exploitive rates."[8/]

24. These interpretations of the Commission's authority under Section 332 give considerable play to the ability of carriers to extract maximum prices and profits for their product. At the same time, the Commission's analysis distorts and minimizes the significance of the statutory requirements of Sections 201 and 202 as well as Section 332 that commercial mobile service radio rates be "just and reasonable" and not "unreasonably discriminatory." Whatever the merits of the Commission's analysis may be, it is clear that a large degree of risk to consumer interest is being allowed on the questionable premise that Congress intended to discontinue State regulation even if just and unreasonable rates and practices are allowed to continue or spring up and without any countervailing Federal responsibility. In fact, Congress specifically removed from the Commission the power to forebear from enforcing Sections 201, 202 and 208 with respect to CMRS providers. See Section 332(c)(1)(A). Thus, the removal of the States as a check on excessive or discriminatory carrier pricing policies places upon the Commission greater responsibility to see that consumer interests are reasonably protected at the Federal level. While additional spectrum for competing mobile voice services is obviously one vehicle for attempting to achieve more competitive conditions, the reseller switch proposal is clearly another structural, deregulatory means of achieving that goal and reducing the likelihood that consumers will be exposed to exploitive rates or discriminatory terms and conditions in violation of Sections 201 and 202.

[8/] Of course, the difficulty with the formulation is that investors always want to maximize rates and profits and consumers of common carrier services are statutorily entitled to just and reasonable rates.

V. Switch-Based Resale Should be Viewed as an Important Adjunct to CMRS Interconnection Policies

25. The Commission has expressed tentative conclusions regarding CMRS to CMRS interconnection proposals and decided that it would be "premature for the Commission to propose or adopt rules of general applicability requiring direct interconnection arrangements between CMRS providers." Second Notice, para. 2.[9/]

26. However, the Commission has acknowledged that:

> "interconnectivity of mobile communications networks promotes the public interest because it enhances access to all networks, provides valuable network redundancy, allows for greater flexibility in communications, and makes communications services more attractive to consumers. It is one further step toward a ubiquitous 'network of networks.'[62/]

> " [62/]*See, e.g.*, H.R. Rep. No. 103-111, 103rd Cong., 1st Sess. 261 (1993)(House Report)('The committee considers the right to interconnect an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network.')"

9/ The Commission further stated that "[a]lthough cellular service has become a staple of modern telecommunications service, many of its potential competitors are just beginning to emerge. We have only recently concluded our auction for the A and B blocks for broadband personal communications service (PCS) licenses and have yet to begin the licensing process. The specialized mobile radio (SMR) industry is also undergoing a period of profound change and technological development. Especially in view of the nascency of many CMRS providers, and the rapidly developing technologies they may be employing, we cannot at this time make general conclusions about either the technical nature of CMRS-to-CMRS interconnection, the costs involved, or the nature of any rules that would best ensure its implementation. For present, we leave such decisions to the informed business judgment of the CMRS providers and to the competitive forces of the CMRS marketplace."

27. To effectuate the legal requirements of Sections 332 and 201, the Commission has correctly highlighted the availability of ad hoc consideration of interconnection requests under Section 208. See paragraphs 38-44 of the Second Notice.

28. Whatever the outcome of the FCC's resolution of other CMRS-CMRS interconnection questions, NWRA deems it important to stress that permitting switched resale is (1) not inconsistent with a policy of refusing to adopt general interconnection requirements and (2) an important vehicle to achieve a degree of interconnectivity among CMRS providers who lack or refuse to allow direct interconnection to other CMRS licensees. As to the first point, interconnection of a resellers' switch primarily serves to police price discrimination by a carrier among its own customers. It is a statutory goal that is not removed because of the number of competitors that the common carrier may face. Avoiding individual carrier discriminatory rates and practices must not be compromised because general CMRS-CMRS interconnection policies among licensed facility-based entities is not now deemed necessary. At the same time, moreover, the reseller switch advances interconnectivity of mobile communications networks, providing an alternate switch presence, for CMRS-CMRS providers, other than through the LEC bottleneck switch.

29. These advantages of switch-based resale also demonstrate that it is not "anomalous" and there is no logical inconsistency in "establishing an interconnection obligation for the benefit of switch-based resellers alone and not for other CMRS providers." Second Notice, para. 96. The potential detriment from allowing facilities-based carriers to interconnect and resell other CMRS

services because it may discourage investment in and build-out of licensed facilities is inapplicable to pure resellers who are without licensed spectrum.[10/]

30. Moreover, the hyperbolic claims of carriers that resellers are attempting to piggy-back on the investment which facility-based carriers have made in their systems is not to be taken seriously. Every reseller customer produces profit for the carrier upon whose system the call is transported. Every innovation, every new service feature, every additional value that a reseller switch can provide generally enhances CMRS service and attracts more customers to all CMRS providers and from which all carriers will profit. Even if resale and switch-based resale were not important means to achieve legislatively mandated goals of non-discrimination and interconnection, one would think that the enlightened self-interest of carriers would lead to encouraging resale, with or without a reseller switch.[11/]

VI. Number Transferability for CMRS Resellers Would Greatly Enhance Competition In the CMRS Marketplace

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[10/] For the purposes of a market power analysis of switched resale, the Commission has asked for comment on the geographic and service products markets against which the need for switched resale may be measured. NWRA takes issue with the Commission's market power analysis. As the Commission has noted in para. 42 of the Second Notice, market power tests do not capture all of the elements of the public interest, which may require regulation even in the absence of market power.

[11/] That this is not the case is more a commentary on carrier motivation than alleged reseller greed. Carriers simply wish to maintain profits which come from bundled service, profits which reflect disparate prices for similarly situated customers, and profits which are protected from the competition of innovative service offerings.

31. The Commission has requested comment on whether to make number transferability requirements a part of its CMRS resale policy.[12/] NWRA supports such a requirement and notes, as has the Commission, that it has already determined that a transferable NXX scheme "would serve the public interest." Second Notice, para. 94. The lack of number transferability for resellers in the CMRS marketplace is a significant impediment to consumer access to a variety of otherwise competing CMRS service offerings. This conclusion is obvious considering the reluctance of consumers to surrender their phone numbers once they have been used over a period of time. Whether they perceive problems in committing a new phone number to memory, both for themselves and their personal and professional relations, or in printing new business stationery, the fact is consumers naturally resist most transactions which will force them to lose their existing phone number in lieu of a new one.

32. This resistance hinders the ability of CMRS resellers to provide an optimum level of service and choice to consumers. First, it is difficult for resellers to transfer their customers from one carrier to another in the event a customer would prefer to use another carrier for reasons of price or service quality. Secondly, it impedes a reseller's ability to negotiate better wholesale rates from carriers and, in turn, to offer lower prices to subscribers. In both instances, whether the reseller wishes to transfer a small group or a large block of subscribers to another carrier, subscriber reluctance to accept a new phone number makes either transaction difficult if not impossible.

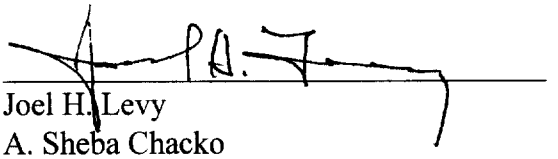
12/ NWRA's Comments are premised upon the assumption that number transferability needs to be given to switchless resellers and that switched-base resellers will acquire their own NXX codes and be able to deliver the benefits of number transferability through control of such numbers.

33. It is important to note that in the interexchange industry, where resale has enjoyed great success, both in providing benefits to consumers and as a viable business venture, number transferability is not an issue; subscribers are not forced to surrender their landline or wireless phone number when a reseller switches their long distance service to another carrier. Indeed, we believe that the fact that number transferability is not an issue in the interexchange market has contributed to the success of long distance resale. Resellers might enjoy similar success in the CMRS industry, and consumers would reap similar benefits from more vigorous competition, if subscribers could retain their phone numbers if a reseller switched their service from one carrier to another.[13/]

34. In summary, number transferability in the CMRS marketplace would be a boon to competition and provide substantial benefits to consumers. The Commission should act quickly to make number transferability a reality.

Respectfully submitted,

NATIONAL WIRELESS RESELLERS ASSOCIATION



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Dated: June 14, 1995

13/ A CMRS providers control of the subscriber's number is in many respects the obverse of the illegal practice of "slamming," where a subscriber's long-distance carrier is changed without approval. Here, without number transferability, a customer is "tied" to a particular CMRS provider whether or not that is in the subscriber's overall interest.

Exhibit A

CMRS Resellers Interconnection Obligations

A - All CMRS licensees and providers, including resellers, are subject to the provisions of this Section.

1 - Upon reasonable request, CMRS providers shall permit interconnection of their facilities to a reseller of CMRS service that is not a CMRS licensee in the same market upon terms that are technically and economically feasible. The party making the request for interconnection shall pay for the direct costs associated with implementing such interconnection. Ongoing charges for interconnected service shall be just, reasonable, and non-discriminatory. All charges for such service shall be offered on an unbundled basis with the charge for each ordered service element separately stated.

2 - Requests for interconnected service shall describe with particularity the proposed arrangement, the qualifications of the party requesting interconnection, and the manner in which the service will be utilized. No request for such service need be granted that is not technically feasible or which would impose on the requested CMRS provider cognizable irreparable economic hardship.

3 - Every CMRS provider upon whom a request for interconnected service is made shall respond in writing within 45 days of the receipt of the request. A refusal to grant interconnected service shall state with particularity the technical and/or economic grounds upon which the refusal is grounded.

4 - A CMRS provider's failure to respond to requests for interconnection within the 45 days or honor reasonable requests shall be reviewable by the Commission upon complaint under Section 208 and subject to the sanctions and forfeitures of Title V of the Communications Act.

CERTIFICATE OF SERVICE

I, Shevry Davis, hereby certify that on this 14th day of June, 1995 copies of the foregoing "Comments of the National Wireless Resellers Association" were delivered to the following

*Chairman Reed E. Hundt
Federal Communications Commission
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1919 M Street, NW, Rm. 814
Washington, DC 20054

*Commissioner James H. Quello
Federal Communications Commission
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1919 M Street, NW, Rm. 802
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